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N.J. BOARD OF DENTISTRY
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ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the Board of Dentistry

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

GERALD P. HIRSCH, D.D.S.
License No. 7703

LICENSED TO PRACTICE DENTISTRY
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER
OF DISCIPLINE

This matter was opened to the Board of Dentistry ("Board") upon receipt of information which the Board has reviewed and on which the following preliminary findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Respondent was initially licensed as a dentist in the State of New Jersey on or about July 18, 1963. Respondent did not renew his license for the renewal period beginning November 1, 1999, nor has he made any application for reinstatement of his license since its expiration.

2. On December 14, 1999, respondent was convicted of a felony in the United States District Court, Southern District of New York, specifically for six counts of mail fraud in violation of 18 U.S.C. 1341. Respondent was sentenced to 97 months of imprisonment and three years of supervised release and ordered to pay restitution in the amount of \$30,927,803.00 with interest.

3. On November 10, 2000, the licensing authority in the State of New York entered an order accepting the voluntary surrender of respondent's license to practice dentistry in that State.

Respondent's application for voluntary surrender was predicated on one specification of professional misconduct. The specification cited to respondent's conviction as set forth in paragraph #2 above.

CONCLUSION OF LAW

1. The above findings of fact provide grounds for disciplinary action in this State, pursuant to N.J.S.A. 45:1-21(f), as respondent has been convicted of a crime of moral turpitude, and pursuant to N.J.S.A. 45:1-21(g), as respondent has surrendered his license to practice dentistry in the State of New York, which surrender is tantamount to a suspension or revocation.
2. Respondent's license is suspended by operation of N.J.S.A. 45:1-7.

DISCUSSION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline was entered on October 5, 2005, provisionally revoking respondent's license and provisionally denying him reinstatement. A copy of the Order was forwarded to respondent's address of record by certified and regular mail. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following its entry unless respondent requested a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal, setting forth in writing any and all reasons why said findings and conclusions should not be modified or dismissed, and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefore.

Respondent replied to the Provisional Order, via his attorney, Frank Cozzarelli, Jr, Esq., in a letter dated June 9, 2007, requesting modification of the Provisional Order. In the letter, respondent's attorney argued that the convictions are completely and totally unrelated to the practice of dentistry. Furthermore, respondent's attorney, relying on "second chance" legislative policies codified in N.J.S.A. 2A:168A-1, et. seq, as well as case law, argued that respondent is sufficiently rehabilitated to warrant the reinstatement of his license to practice dentistry in New

Jersey. Evidence of respondent's rehabilitation efforts were submitted as part of the correspondence. Subsequently, the Board received additional submissions, including a letter from respondent dated April 1, 2008, as well as evidence that respondent will be working with 4-H children and local grade school children by teaching an agriculture class. Respondent also provided several proofs regarding the completion of dental related continuing education classes during 2007.

After considering the entire record, including the arguments and submissions by counsel and by respondent, the Board concluded there were no material discrepancies raised which warranted a modification of the findings of fact or conclusions of law. However, the Board held that a hearing regarding respondent's request for reinstatement, as well as his request for a mitigation of penalty, was necessary.

On August 6, 2008, a mitigation hearing was held before the Board. During the hearing, respondent provided testimony regarding his rehabilitative efforts. Respondent also provided testimony regarding efforts to provide restitution to the victims under the court's restitution order. Respondent argued that his conviction for mail fraud was unrelated to the practice of dentistry. It was a conviction that arose from an outside business activity, involving the financial revenue field, not medicaid or insurance fraud.

At the conclusion of the hearing, the Board gave consideration to all of the documentation submitted by counsel and respondent, and also considered the testimony by respondent and arguments of counsel during the mitigation hearing. The Board considered all of the evidence as it relates to the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-2. The Board reviewed the nature and duties of the license for which respondent is applying, the nature and seriousness of the crime, the circumstances under which the crime occurred, the date of the crime, respondent's age at the time of the crime, whether the crime was an isolated or repeated incident, social conditions contributing to the crime and evidence of rehabilitation.

Respondent's conviction (i.e. six counts of mail fraud in violation of 18 U.S.C. 1341), clearly impacts the nature and duties of the practice of dentistry. The practice of dentistry inherently

requires public trust. Dentists obtain patient's individual medical and financial information, including the submission of insurance claims to companies. Therefore, respondent's conviction does impact upon the practice of dentistry.

The Board considered the nature and seriousness of respondent's conviction. According to the court documentation received by the Board, respondent was convicted of six counts of mail fraud, involving numerous investors. The restitution amounts to over 32 million dollars. Respondent's convictions resulted in a served sentence of 97 months of imprisonment and three years of supervised release.

The Board considered the circumstances under which the crime occurred. Respondent by all accounts had a flourishing dental practice, and was making a good living from the practice of dentistry, when the crimes were committed. Respondent was licensed as a dentist in 1965 and had been making a successful living practicing and teaching dentistry when the crimes occurred.

The Board considered the date of the crimes. The Board notes that respondent's convictions occurred in 1999 for criminal acts which took place during 1996 and 1997. It has been more than ten years between respondent's last criminal act and his request for reinstatement of his license.

The Board considered the age of respondent when the crime was committed. Respondent committed his offenses when he was 58 and 59 years old. He was of mature years when the offenses were committed. Respondent cannot claim he was young or uneducated when the crimes were committed.

The Board considered whether the crime was an isolated or repeated incident. It is noted that respondent pled guilty to six counts of mail fraud. The court documentation obtained by the Board, including respondent's plea allocution, indicates respondent made material misrepresentations to numerous investors amounting to over 32 million dollars in owed restitution. It is clear respondent's actions were not an isolated incident, but rather actions that were repeated over the course of two years.

Respondent did not present any evidence regarding social conditions which may have contributed to the crimes. Respondent cited to the sub-prime lending crisis to explain why his mortgage business struggled and why he resorted to making material misrepresentations to investors. However, the Board finds respondent's crimes were committed against persons that entrusted their money and investments with respondent. Respondent violated the trust placed in him by these investors.

Finally, the Board considered any evidence of rehabilitation. The Board notes respondent has made strides toward rehabilitation. Respondent's efforts include his good conduct while in prison, including the creation and teaching of educational courses for inmates while he was incarcerated, as well as the establishment of vegetable gardens in prison which were cared for by fellow inmates and provided food for the prison population. Additional rehabilitative efforts include the acquisition of additional academic or vocation schooling, such as respondent taking learning courses in horticulture through Rutgers University and several other universities. Respondent also volunteers at the Veterans Administration in New Jersey, volunteers with school systems teaching children to establish and care for vegetable gardens, and volunteers his services with Jewish Family Services.

The Board has considered the testimony of respondent, the written submissions of respondent and his attorney, the documentation and evidence related to respondent's crimes and convictions, as well as the evidence submitted by respondent in support of his claim of rehabilitation. While the Board has determined that the evidence presented does not warrant a modification or dismissal of the findings of fact or conclusions of law, the Board does believe that a mitigation of the penalty is appropriate. Therefore, the Board will reinstate respondent's license subject to conditions. The Board believes that reinstating respondent's license will allow him to increase the restitution amounts paid to the victims under the court's restitution order. Respondent appears to be doing well at this time and has demonstrated evidence of rehabilitation. However, the Board is keenly aware of respondent's criminal history and therefore restrictions on

respondent's license are appropriate. The Board finds that the restrictions placed on respondent's practice by this final order are adequate to protect the health, safety and welfare of the public.

ACCORDINGLY, IT IS on this 12 day of December, 2008,

HEREBY ORDERED AND AGREED THAT:

1. Respondent's license is hereby suspended for a period of nine (9) years, which shall be served as an active period of suspension, retroactive to December 14, 1999, the date of the imposition of respondent's criminal sentence.
2. Prior to reinstatement, respondent shall demonstrate to the satisfaction of the Board that he has been fully compliant with the court's restitution order and that he is current with his restitution obligations.
3. Respondent is prohibited from owning his own dental practice, having an ownership interest in a dental practice or otherwise engaging in a solo practice. Respondent shall practice dentistry only in a group setting. Respondent shall immediately notify the Board of the practice location, the name(s) of the New Jersey licensed dentist(s) with whom he is working, and provide a description of their working relationship.
4. Prior to reinstatement, respondent shall present to the Board proof of a bona fide job offer he received from a dentist. The job offer must comply with the provisions outlined in paragraph #2 and must receive prior approval from the Board. Any future change of employment must receive prior approval from the Board.
5. Respondent shall submit to the Board, on a quarterly basis, his earning statements and statements concerning the outstanding restitution owed to the victims. For purposes of this order, the first quarterly submissions shall be due on January 1, 2009 for all earnings received, and all restitution paid, for the months of November and December 2008, and then quarterly thereafter.
6. The Board may automatically suspend respondent's license upon respondent's failure to timely provide the Board with his earning statements and statements concerning the outstanding restitution owed to the victims as outlined in paragraph #5. Additionally, the Board may

automatically suspend respondent's license upon receipt of any information, which the Board in its sole discretion deems reliable, which demonstrates that respondent has not been compliant with his restitution obligation.

7. Respondent shall have the right to apply for removal of the automatic suspension on five (5) days notice, but in such event shall be limited to a showing that he has complied with the quarterly reporting requirements outlined in paragraph #5 or has otherwise complied and is current with the restitution obligation outlined in the court's restitution order.


8. Respondent shall only be permitted to prescribe controlled dangerous substances for patients as required in connection with dental treatment or administer medication to patients in the course of dental treatment, in accordance with the following terms and conditions:

(a) Respondent shall use sequentially numbered, triplicate prescription pads for all prescriptions written.

(b) Respondent shall provide the original prescription to the patient, attach one copy of the prescription to the patient record, and submit the third copy to the Board, attention Jonathan Eisenmenger, Executive Director, on a quarterly basis. For purposes of this order, the first quarter commences on January 1, 2009 and the first submission shall be due no later than March 31, 2009, for all prescriptions written in January, February and March 2009.

(c) Respondent shall be required to account for each consecutively numbered prescription, regardless of whether the particular prescription was voided or not used for any purpose whatsoever.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Alexander Hall, D.M.D.
Board President